IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 292 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANAND SITARAM AKAREKAR

Versus

HARISHBHAI SHANTILAL GANDHI

Appearance:

MR VIJAY H PATEL for Petitioner

MR KJ SHETHNA for Respondent No. 1

MR ST MEHTA, ADDL. PUBLIC PROSECUTOR for Respondent No. 8

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: ( )/06/2000

C.A.V. JUDGEMENT

This is a Criminal Revision Application filed under Section 401 of the Criminal Procedure Code, 1973, (for short, "Cr.P.C.") filed by original complainant Anand Sitaram Akrekar challenging the legality,

correctness and propriety of the order dated 20.2.1988 passed by the learned Judicial Magistrate First Class, Umargaon (Mr D.H. Shah), (who will be referred to hereinafter as "the learned Magistrate") in Enquiry Case No.21 of 1985 which was pending on his file.

2 Here in this present matter the Revision Petitioner was original complainant while original accused nos.1 to 7 are the Revision Opponents Nos.1 to 7 and therefore for the sake of convenience the parties will be referred to hereinafter as the complainant and the accused, respectively.

3 The facts leading to this Criminal Revision Application in a nutshell are as follows:-

4 The complainant is residing in Umargaon and since many years before 30.12.1985, he is serving in Harish Textiles Engineering Private Limited (for short, "the Company") of which accused no.1 is an owner and Chief Manager and other accused nos.2 to 7 are serving in the said company. All the accused are headstrong persons and they are companions of each other. About 450 employees including the complainant are serving as workmen in the said company. They had placed their charter of demands before the company and they have formed their union. As the said workmen including the complainant had formed the union, accused no.1 who is an owner of the company had become angry and was enraged as a result of which he, without giving any legal notice to the workmen, stopped the workmen from entering into the premises of the company for their respective duties on 20.9.1985. All the employees of the company were shouting slogans outside the gate of the company in the morning, every day. To make the split amongst the workmen, accused no.1 had tried to harass the workmen through about 60-70 goondas. He also informed D.S.P. Valsad by making a complaint against the union. As accused no.1 had made an application for police protection, one police was put at the front gate of the company. On or about 20.9.1985, the accused no.1 stopped workmen from entering into the company-premises for performing their respective duties. On or about 27.11.1985, at about 8.30 AM the complainant in company of other employees were shouting slogans outside the gate of the company and at that time accused no.2 who is an engineer came there by a car. There were about 3-4 persons inside that car. One Rajinder, one of the employees and other 2-4 employees requested accused no.2 to halt his motor car and they informed accused no.2 that workmen had been ousted by accused no.1 and further asked as to why work is being taken, through other

outside-labourers. Thereupon, accused no.2 gave abuses with filthy language and he gave a slap to Rajinder and picked up a quarrel with the employees. He gave threats to the employees and then he went inside the company-premises.

5 Thereafter, within a short period, accused no.1 in company of accused nos.3 to 7 and about 50-60 gundas who were engaged earlier by them, rushed towards the gate of the company and they threw bottles of soda water and pelted stones on the employees. It is alleged that at that time, some armed police personnel were there with the accused. Accused no.1 snatched one rifle from one of the armed police personnel and opened fire indiscriminately and in that incident the complainant sustained injury on his right shoulder by bullet fired from the rifle of accused no.1. At that time one Ramesh Jagannath who was standing nearby the complainant sustained fire-injury in his abdomen. Over and above, one Govindbhai Kariyabhai also sustained bullet injury on his chest and he fell down on the ground. At that time accused no.1 had a revolver also with him and he handed over the said revolver to accused no.3 who also fired from that revolver on his employees.

It is also the case of the complainant that one police man had also fired from his rifle as a result of which the employees started to run away from the place. The complainant and two other injured persons were brought on the road and they were shifted to primary health centre by a rickshaw. Govindbhai Kariyabhai who had sustained an injury by bullet fire was declared dead. Thereafter the complainant and other injured person Rameshbhai took first aid treatment in primary heallth centre and they were shifted to Kasturba's Hospital, Valsad. On that day the Executive Magistrate recorded the statements of the complainant and injured Rameshbhai. It is also the case of the complainant that operation was performed on him as well as Rameshbhai Jagannath and fire bullets were taken out from the body. They were discharged from the hospitall on 29.9.1985. It is also the case of the complainant that on the next day these accused and hired goondas had put about 50-60 bicycles of the empoyees, on fire. The motor car of the accused no.2 which was parked nearby the said bicycles was also heavily damaged. Thereafter accused no.2 lodged a complaint in the police station against the present complainant, deceased Govindbhai Kariyabhai and other employees. Thereafter the complainant lodged his private complaint against all the accused persons in the court of the learned Magistrate on 30.12.1985. That complaint was

lodged against the accused and other unnamed accused persons for the offences punishabe u/s 120B, 302, 307, 326, 324, 435, 104 and 149 of IPC and also under Section 25 of the Arms Act. That complaint came to be registered as Inquiry Case No.25 of 1985.

6. On 30.12.1985, the learned Magistrate passed an order for an enquiry u/s 202 (2) of Cr.P.C. against the accused by himself. Thereafter the learned Magistrate examined on oath following persons in that Court enquiry u/s 202 (2) of the Cr.P.C.:-

(i) Anand Sitaram Akrekar (Complainant)
(ii) Dr Rajendrakumar Dipchand (Medical Officer)
(iii) Ramesh Jagannath Save
(iv) Laxman Kalidas Dubla
(v) Rajinder Singh Sudama Singh
(vi) Hirakbhai Ishwarlal Desai (Chief Medical Officer)
(vii) Shantilal Bhanabhai Patel

During the said Court-enquiry u/s 202 of Cr.P.C., the learned Magistrate passed on order dated 26.11.1987 directing to issue show-cause notices on following two police constables to show-cause as to why they be not impleaded as accused in the aforesaid case:-

(i) Shri Sayajirao Narayan, Buckle No.1248
(ii) Shri Gambhirbhai Shyamdas, Buckle No.436.

In that Court enquiry u/s 202 of Cr.PC the aforesaid two police constables submitted their reports exh.60 and exh.61 and the Senior P.S.I. of Crime Branch who was an investigating officer of police case (which ultimately came to be chargesheeted and registered as Criminal Case No.1638 of 1986) submitted his report also dated 2.12.1987. Thereafter the complainant and accused who were cited in the complaint submitted written arguments exh.69 and 71. The aforesaid two police personnel had submitted in their reports exh.60 and 61 that for a moment if the Court comes to a conclusion that case is required to be committed to the Sessions Court, then, the Court should consider the fact that they had opened fire in their capacities as public servants and therefore sanction of the Government u/s 197 of the Cr.P.C. is very much necessary and as the complainant has not sought any such sanction u/s 197 of the Cr.P.C., the proceedings against them i.e. two police personnel be dropped.

7. Thereafter, the learned Magistrate after hearing the learned advocates for both the parties and after

considering the written reports at exh.56, 60 and 61 and written arguments at exh.69 and 71 reached to a conclusion that for the aforesaid two police personnel sanction u/s 197 of Cr.P.C. is very much necessary and unless and until the complainant produces sanction u/s 197 of Cr.P.C. accorded by the Government, no case can be committed against said two police personnel. He also came to a conclusion that case against other accused nos.1 to 7 whose names are cited in the complaint, cannot be committeed to the Court of Sessions as that case cannot be separated from the case against the aforesaid two police personnel. After recording the arguments and reasons the learned Magistrate passed a final order on 20.2.1988 and dropped the proceedngs against all the accused along with the aforesaid two police constables.

8. Being aggrieved against and dissatisfied with the aforesaid order dated 20.2.1988, passed vide exh.46 in Enquiry Case No.21 of 1985 the original complainant has preferred this Criminal Revision Application u/s 401 of Cr.P.C. whereby he has challenged the correctness, legality and propriety of the aforesaid order.

9. I have heard Shri V.H. Patel, the learned advocate for the Revision-Petitioner and Shri K.J. Shethna, the learned Senior Advocate, representing Revision-Opponents Nos.1 to 7. I have perused all the documents produced in the present matter and R & P of the case which has been called for from the lower Court.

At the outset, it is required to be noted that Revision-Petitioner who is original complainant has not joined police constables in whose favour said order dated 20.2.1988 has been passed in this Criminal Revision Application. In this Criminal Revision Application only original accused whose names are cited in the complaint are joined as Revision Opponents Nos.1 to 7. Revision Opponent No.8 is State of Gujarat. It means that the complainant has not challenged the order dated 20.2.1988 so far as it relates to dropping of the proceedings passed in favour of police constables - Sayajirao Narayan, Buckle No.1428, and Gambhirbhai Shyamdas, Buckle No.436. In this Criminal Revision Application an order with regard to dropping of the proceedings passed in favour of original accused nos.1 to 7 is challneged and therefore this Criminal Revision Application is filed in this Court with a request to examine the correctness, legality and propriety of the order daed 20.2.1988 which relates to original accused nos.1 to 7 only and not against the aforesaid two police personnel.

10. As the complainant lodged his private complaint u/s 200 of the Cr.P.C. for offences exclusively triable by Sessions Court the learned Magistrate has proceeded to follow the provisions of Section 202 (2) of Cr.P.C. He examined the complainant and his witnesses on oath and ultimately passed an order dropping the proceedings of the case against the accused. Thus, it appears that instead of taking cognizance against the accused u/s 204 of the Cr.P.C., the learned Magistrate passed an order u/s 203 of the Cr.P.C. and ordered to drop the proceedings against the accused. Thus, an order which is challenged in this Criminal Revision Appliclation is nothing but an order u/s 203 of Cr.P.C. by which the complaint of the original complainant is dismissed. Therefore, that order dated 20.2.1988 which is an order u/s 203 of Cr.P.C. is chalelnged in this Criminall Revision Application.

11 During the course of the arguments, Shri V.H. Patel, the learned advocate for the Revision-Petitioner has argued that merely because aforesaid two police constables are entitled to the benefit of defence of not having obtained the sanction under Section 197 of the Cr.PC by the complainant before lodging the complaint, no other accused should be given that benefit along with said two police constables. Looking to the provisions of Section 203 of Cr.PC, the learned Magistrate has only to consider as to whether there is a prima facie case and sufficient ground for proceeding against the accused. He has vehemently argued that looking to the evidence of the complainant and his witnesses which was recorded by the learned Magistrate u/s 202 (2) of Cr.PC, there is an ample evidence against opponents nos.1 to 7 to proceed against them for offences revealed in the evidence of the complainant and witnesses and therefore an order dropping the proceedings against the accused is, on the face of it, illegal, incorrect and improper and therefore it should be set aside.

12 As against the aforesaid arguments, Shri K.J. Shethna, the learned counsel for accused nos.1 to 7 has argued that the learned Magistrate has considered all the evidence on record together with reports exh.56, 60 and 61 and therefore he has rightly come to the conclusion that there is no prima facie case against the accused and therefore the learned Magistrate has rightly passed the order in favour of accused nos.1 to 7.

13 Shri S.T. Mehta, the learned A.P.P. for the State has supported the order of the learned Magistrate so far as it relates to police constables. He has argued

that said two policemen were present there and as the mob was unruly, firstly a warning was given and fire was made in the air but the mob did not disperse and incident of burning of bicycles and car took place. In short, he has supported the case of the two police constables. He has not argued anything for or against the Revision Opponents Nos.1 to 7.

14. At the cost of repetition it is required to be noted that the original complainant who is Revision-Petitioner in this matter has not filed any Revision Petition against two police constables in whose favour the proceedings were dropped by the learned Magistrate. He has not cited said two police constables as the opponents in this present Criminal Revision Application and therefore it cannot be said that Revision-Petitioner has challenged the order of the learned Magistrate dropping the proceedings against two police constables.

15. Shri V.H. Patel, the learned advocate for the Revision-Petitioner has argued that looking to the evidence collected by the learned Magistrate by holding an enquiry u/s 202(2) of the Cr.P.C., the learned Magistrate ought not to have dropped the proceedings against the present opponents because there is an ample evidence against them to proceed against them and looking to that evidence there is sufficient ground for proceeding against the present opponents nos.1 to 7. As against this, Mr K.J. Shethna, the learned Senior Advocate for the opponents nos.1 to 7 has vehemenly argued that looking to the facts and circumstances of the case and the evidence collected by the learned Magistrate during the course of Court-inquiry u/s 202 of the Cr.P.C. the learned Magsitrate has considered all the aspects of the case and has rightly come to a conclusion that there is no sufficient ground for proceeding against accused nos.1 to 7 and therefore he has rightly dropped the proceedings against Revision-Opponents. In support of his arguments he has cited following authorities:-

(i) Unreported Judgement of this Court (Coram: R.R. Jain, J.) dated 4th Jully 1997 rendered in Misc. Criminall Appilcation No.163 of 1994 with Criminal Misc. Application No.1681 of 1994.

By citing this decision, Shri K.J. Shethna has argued that though complaint and evidence collected in the Court enquiry prima facie constitute an offence, yet, considering that evidence it prima facie show that the evidence is absurd and inherently improbable and that on

the basis of that evidence no prudent person would have reached to a just conclusion that there is sufficient ground for proceeding against the accused. By citing this judgement, Mr Shethna has argued that this Court has power to appreciate the evidence collected u/s 202 (2) of the Cr.P.C. and this Court is free to come to the conclusion that the story advanced by the complainant and allegations made in the complaint is so fantastic that it cannot reasonably be held to be true as absurdity appeared to be true and correct and constituted an offence. Whatever the legal position is settled in this unreported decision is not in dispute. Such type of legal position can be made applicable to facts and circumstances of the deserving case. Considering the facts and circumstances of the case, this Court (R.R. Jain, J.) came to the conclusion that the facts were fantastic and they were so absurd and inherently probable on the basis of which no prudent person would have reached to a just concusion. Each case is to be decided on its own facts and circumstances. Looking to the evidence collected by the leanred Magistrate this COurt finds that the aforesaid legal position is not applicable to the present set of facts and circumstances.

16 Shri K.J. Shethna, the learned Senior Advocate, has cited an authority of VADILAL PANCHAL V/S DATTATRAYA DHULAJI GHADIGAONKER reported in AIR 1960 SC 1113. In this case it is held that when a Magistrate directs an enquiry u/s 202 of Cr.P.C. for ascertaining the truth or faleshoold of a complaint and receives a report from the enquiring Officer supporting a plea of self-defence made by the person complained against, it is not open to him to hold that the plea is correct on the basis of the report and the statements of witnesses recorded by the enquiring officer. It is further held that it is not obligatory on the part of the Magistrate as a matter of law to issue process in such case and leave the person complained against to establish his case at the trial. In this cited case the inquiry u/s 202 of Cr.P.C. was entrusted to the Superintendent of Police as an enquiring officer. Pursuant to that order of appointing inquiring officer the Superintendent of Police submitted his report and in that report the Police Inspector subordinate to Supreintendent of Police had observed that from the exhaustive inquiries made immediately after the incident it was disclosed that Shri Panchal was justified in resorting to fire arms in self-defence of himself and other occupants of the motor car. Here, this case on hand the learned Magistrate himself had conducted the enquiry u/s 202 of Cr.P.C. and has collected the evidence. That evidence is still unchallenged because

that evidence is not cross-examined by the Revision-Opponents and naturally they cannot cross-examine sais witnesses at that stage of inquiry. Therefore, when the learned Magistrate passed an impugned order there was no evidence suggesting the case of self-defence for which arguments are advanced by Shri K.J. Shethna and therefore this authority is not applicable to the present set of facts and circumstances.

17 Shri K.J. Shethna has cited one authority of Amjadkhan s/o Haji Mohammedkhan reported in AIR 1952 SC 165. In that case during the course of actual trial against the accused of that case evidence was led by the prosecution and the accused of that case set up a defence of "a right of private defence". This authority is not helpful to the Revision-Opponents because the question with regard to right of private defence was considered by the Hon'ble Supreme Court in the case in which the trail was ended in conviction and accused of that case were sentenced. The Hon'ble Supreme Court accepted the defence of the accused of that case and gave a benefit of right of private deefence considering the evidence led in that case. This present case is altogether a different one because, yet no cognizance has been taken by the learned Magistrate against the Revision-Opponents. At the threshold of considering a question whether there is sufficient ground for proceeding against the accused or not, the learned Magistrate without assigning cogent reasons passed an order dropping the proceeding against the present Revision-Opponents. It may be noted that stage of appreciating the evidence at the time of issuance of summons is quite different than the stage of appreciating the evidence holding the accused guilty or not after the conclusion of the trial.

18 Mr Shethna has cited one another authority in the case of SATISH MEHTA V. DELI ADMINISTRATION 1996 3 Crimes 85 SC. In this case words "sufficient ground for proceeding against the accused" used in Section 227 are explained. Section 227 of Cr.P.C. comes after a case is committed to Sessions Court i.e. after taking cognizance either by the police or the learned Magistrate particularly in the case of private complaint lodged for offences for which trial can be held in the Sessions Court. Therefore, this authority is not helpful to the case of the Revision-Opponents because, the learned Magistrate has not yet taken any cognizance against the accused. This authority can be made applicable to a case in which accused have been discharged u/s 227 of Cr.P.C.

19 Looking to the provisions of Section 203 and 204

of Cr.P.C. both the sections are inter-related because in both the sections words "sufficient ground for proceeding against the accused" are used. After considering the statements made on oath of the complainant and all the witnesses and the result of the inquiry or investigation if any u/s 202 of Cr.P.C. if the Magistrate is of the opinion that there is no sufficient ground for proceeding, then, he can dismiss the complaint and if he comes to a conclusion that he is of the opinion that there is sufficient ground for proceeding against the accused, then, he can take cognizance u/s 204 of Cr.PC against the accused and he may issue process against the accused. Therefore, it is necessary to know as to what the words "sufficient ground for proceeding against the accused" used in Section 203 and 204 of Cr.P.C. are meant for?

20 In case of NIRMALJIT SINGH HOON Vs. THE STATE OF WEST BENGAL AND ANR. reported in AIR 1972 SC 2639 it has been held that the words "sufficient ground" used in Section 203 and 209 of Cr.P.C. mean the satisfaction that a prima facie case is made out against the present accused by the evidence of the witnesses entitled to a reasonable degree of credit and do not mean sufficient ground for the purpose of conviction. It has been held in para 22 as follows:-

"Under Sec. 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under sec. 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under sec. 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground used also in sec. 209 have been construed to mean ,the satisfaction that a prima faice case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. [see R. G. Ruia v. Bombay(1)]. In Vadilal Panchal v. Ghadigaonkar(2) this Court considered the scheme of secs. 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of

process. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Sec. 203 consists of two parts. The first part lays down the materials which the magistrate must consider, and the second part says that if after considering those materials there is in-his judgment no sufficient ground for proceeding, 'he may dismiss the complaint. In Chandra Deo Singh v. Piokash Chandra Bose,(1) where dismissal of a complaint by the Magistrate at the stage of sec. 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused."

21. In case of J.R.D. Tata, Chairman, T.I. & S.Co. Ltd. v/s Payal Kumar reported in 1987 Cr.LJ 447 Delhi High Court on relying a decision of SMT. NAGAWWA V. VEERANNA SHIVALINGAPPA reported in AIR 1976 SC 1947 held that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and is only to be prima facie satisfied whether there was sufficient ground for proceeding against the accused. The Magistrate is not required to go into the detailed discussion of the merits or demerits of the case. The Magistrate is not supposed to weigh the evidence meticulously as if he were the trial court. Moreover, the standard to be adopted by the Magistrate in scrutinising the evidence at the stage of Ss. 203 and 204 is not the same as the one which is to be kept in view at the stage of framing the charges. So at the stage of taking any decision u/s 203 or 204 of Cr.P.C. the Magistrate is required to come to the conclusion as to whether there is a prima facie case to proceed against the accused. That is for only taking cognizance and not for the trial. In case of RAM GOPAL RUIA V. STATE OF BOMBAY reported in AIR 1958 SC 97 Sections of 209 and 210 of old Cr.P.C. 1898 were dealt with. In that case there was a controversy that it centred round the

interpretation of words "sufficient ground" occurring in Sections 209 and 210 of Cr.P.C. It is observed in that case that in some cases it has been held that the duty of the committing Court is only to satisfy that there are sufficient grounds committing the accused for trial in the sense that there is prima facie case which may lead to conviction of the accused. Ultimately it was held that if the justices are of the opinion that there is sufficient evidence to put the accused for trial by a jury for any untenable offence it must commit him for trial in custody or on bail.

22 Looking to the above legal position, the learned Magistrate ought to have considered only one thing and that is as to whetehr there is strong prima facie case against the accused for proceeding against the accused i.e. for taking cognizance against the accused. The learned Magistrate has not to decide as to whether there is sufficient ground for proceeding against the accused so that trial against that accused may ended in conviction.

23 Admittedly, all the accused nos.1 to 7 submitted an application exh.46 dated 28.9.1977 requesting the learned Magistrate to drop the proceedings against all the accused. That application was heard in detail at length and ultimately the learned Magistrate by his first order dated 20.11.1987 directed for issuance of show-cause notice as to why 2 police constables be not added as accused in the case. Thereafter said two police constables appeared before the Court and they submitted their written replies exh.60 and 61. Senior P.S.I. of Crime Branch also submitted his report exh.56 on 2.12.1987. Thereafter those three reports were considered. In para 3 of the orer dated 20.2.1988 the learned Magistrate has appreciated the evidence of the witnesses which he examined during the course of the court inquiry. After considering the complaint exh.1 and evidence of the complainant and witnesses together with reports exh.56, 60 and 61 as mentioned in para 4 of the order he came to the conclusion in para 5 of his order that so far as case against two police constables is concerened, sanction u/s 197 of Cr.P.C. is necessary. To substantiate his conclusion the learned Magistrate has referred to certain authorities in para 6 of his order. In para 6 of his order he referred to and considered certain authorities and notification dated 15.5.1974 of the State Government and thereafter he has come to the conclusion in para 8 that no trial can be proceeded further against two police constables in absence of

sanction u/s 197 of Cr.P.C. and therefore in the final order he passed an order dropping the proceedings against said two police constables for want of sanction u/2 197 of Cr.P.C. but at the same time he has dropped the proceedings against other accused nos.1 to 7 for whom sanction u/s 197 of Cr.P.C. is not at all necessary. The reason stated for dropping the proceeding against accused nos.1 to 7 is that since the case cannot be proceeded further against said two police constables, the case cannot be separated from the case against those two police constables and therefore case cannot be committed to the Sessions Court. I have gone through the impugned order challenged in this Revision Application and I have found that most of the discussion made by the learned Magistrate in his order is pertaining to case against two police constables. He has not assigned any reason for dropping the proceedings against other accused except that is what is stated in para 8 of the order. As stated earlier, the reason is only to the effect that the case against accused nos.1 to 7 cannot be separated from the case against those two police constables and therefore case cannot be committed to the Sessions Court and on the basis of the conclusion so arrived at by him he passed an order dropping the proceedings against accused nos.1 to 7.

24 It may be noted that nowhere the learned Magistrate has come to a conclusion that there is no sufficient ground for proceeding against accused nos.1 to 7. It may be noted that Section 203 of Cr.P.C. under which he passed an order the learned Magistrate was expected of to record his reasons for dropping the proceedings against accused nos.1 to 7. As stated earlier, in case of NIRMALJIT (supra) the words "sufficient ground" used in Section 203 have been considered to mean the satisfaction that a prima facie case is made out against the present accused by the evidence of the witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction. At this juncture, it is stated at the cost of repetition that the leanred Magistrate is only to satisfy himself as to whether thre is a prima facie case for taking cognizance only and not for framing of the charge of not for coming to the conclusion for conviction. As stated earlier, the learned Magistrate has assigned the only reason that the case against accused nos.1 to 7 cannot be separated from the case against two police constables and therefore he passed an order dropping the proceedings against accused nos.1 to 7. This reason is absolutely no sufficient ground for dropping the proceedings. As discussed earlier, the

learned Magistrate recorded the evidence of 7 witnesses whose evidence was recorded by his predecessor Shri V.B. Gandhi. If we read the evidence of the said 7 witnesses it can be said that there is prima facie case against accused nos.1 to 7 for taking cognizance against them u/s 204 of Cr.PC. As discussed earlier, the learned Magistrate has not taken into consideration any piece of evidenceof any of the 7 witnesses for passing a final order which is challenged in this revision application. The learned Magistrate has not exercised his jurisdiction which is vested in him u/s 203 of Cr.P.C. by which he was required to consider the statements on oath if any of the complainant and of the witnesses and the result of the enquiry u/s 202 of Cr.P.C. which he held and therefore this is a case in which interference of this Court is necessary. The order dated 20.2.1988 below application exh.46 is contrary to law and it requires to be set aside. The present Criminal Revision Application deserves to be allowed and accordingly it is allowed.

25 In the result, the order dated 20.2.1988 passed below exh. 46 in Inquiry Case No.21 of 1985 is set aside so far as it relates to accused nos. 1 to 7 who are Revision Opponents nos.1 to 7 in this matter with a direction that the learned Magistrate shall afford a reasonable opportunity of being heard to both the parties and after fulfilling the requirements state din Section 203 of Cr.P.C. and then he shall pass a fresh order below applciation exh. 46 without being influenced by the observations of this Court made in this judgement. Rule is made absolute in accordance with the order made hereinabove.

As the case is relating to an incident which took place on 27.11.1985, it is very much necessary that the learned Magistrate shall give top priority to this matter and treat it as urgent one and pass his final order as directed hereinabove at the earliest within three months from the date of this order.

(H H Mehta J.)